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Division Bench (Criminal)

In the High Court of Judicature at Jabalpur (M.P.)

Cri. Appeal No. 322/2000

Appellant :- Ghadawa Gond son of late Saduram Gond, aged
Accused (In Jail) about 36 years, resident of village- Temaru-
gaon, Police Station- Baneor, Distt. Bastar.

Versus

Respondent:- The State of M.P. through Police Station, Baneor
Distt. Bastar (M.P.)

Criminal Appeal under Section 374 of the Code of CriminalProcedure.Offence

मामला क्रमांक ..Cr.A..322.... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>HIGH COURT OF CHHATTISGARH AT BILASPUR</u> <u>CORAM : HON'BLE SHRI L.C. BHADOO &</u> <u>HON'BLE SHRI DHIRENDRA MISHRA, JJ.</u> <u>CRIMINAL APPEAL NO. 322 OF 2000</u>	
	<u>Appellant</u>	Ghadawa Gond
	<u>versus</u>	
	<u>Respondent</u>	The State of M.P.
	<u>Present</u> : Shri Ravish Verma counsel for the appellant. Shri Akhil Mishra, Panel Lawyer for the respondent/State.	
	<u>ORAL JUDGMENT</u> (17.08.2006)	
	<u>Per L.C.Bhadoo, J. :</u> This appeal is directed against the judgment of conviction and order of sentence dated 7.12.1999 passed by the learned III Additional Sessions Judge, Jagdalpur in S.T.No. 28/99 whereby the learned Additional	

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आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Sessions Judge after convicting the accused/appellant for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and pay a fine of Rs.5000/- and in default of payment of fine to further undergo R.I. for one year. 2. The prosecution case in brief is that 20.10.1998 at about 10 a.m. when the accused and the deceased, father of the accused, were present in the house, some altercation took place between them, as the deceased had asked the accused that he was not working and he was not taking the cattle to the field for the purpose of grazing, which infuriated the accused on which he picked up a stone and attacked with the same on the head of his father, as a result of which deceased namely Sadhuran fell down as he received a fracture of occipital temporal bone of left side of skull. The matter was reported to the Police Station Benur by Meghnath (PW-2), the village Kotwar. On receiving the report the police registered a case under section 302 of the IPC. The Investigating Officer left for the scene of occurrence, after giving notice to the Panchas he prepared the Panchnama of the dead body of Sadhuran (Ex. P-1) in which it has been mentioned that on account of head injury received on 20.10.1998 at about 10 a.m. deceased Sadhuran died on 21.10.1998 at about 6 a.m. While in the police custody the accused gave memorandum (Ex. P-4) regarding the stone - weapon of offence, and in pursuance of that the stone was got recovered under (Ex. P-5). The dead body was sent for post mortem examination to the Primary Health Centre, Kondagaon where Dr. S.	

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आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Lonhare (PW-10) conducted the post mortem on the body of Sadharam and prepared the post mortem report (Ex. P-13) in which he opined that the cause of death was due to extra dural haematoma and excessive hemorrhage and the nature of death was homicidal. The Investigating Officer also prepared the site plan of Ex. P-10. After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Jagdalpur, who in turn committed the case to the Court of Sessions Judge, Jagdalpur from where the learned III Additional Sessions Judge, received the case on transfer for trial. 3. Prosecution in order to establish the charge against the accused/appellant examined 10 witnesses. On the other hand, statement of the accused under section 313 of the Cr.P.C was also recorded in which he denied the material appearing against him in the prosecution case and stated that he is innocent and has been falsely implicated in the crime. 4. Learned Additional Sessions Judge after hearing the counsel for the accused/appellant and the Additional Public Prosecutor for the State convicted and sentenced the accused as mentioned in paragraph one of this judgment. 5. We have heard Mr. Ravish Verma, learned counsel appearing on behalf of the accused/appellant and Mr. Akhil Mishra, learned counsel for the respondent/State.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6. The fact of homicidal death of Sadhuram has not been disputed by learned counsel for the accused/appellant. Even otherwise, from the evidence of PW-10 Dr. S. Lonhare who conducted post mortem on 22.10.1998 on the body of Sadhuram which was identified by the village Kotwar, the cause of death was excessive bleeding, the injuries were sufficient to cause death in the ordinary course of nature and also in view of the extra judicial confession made by the accused before PW-2 Meghnath, PW-3 Ganga, PW-5 Ghasiya and PW-6 Rameshwar it is established that the death of Sadhuram was homicidal in nature. 7. As far as the involvement of the accused/appellant in the crime in question is concerned, from the evidence of PW-2 Meghnath, the Sarpanch of the village who lodged the report in the police station, PW-5 Ghasiya and PW-6 Rameshwar, it is established that the accused made extra judicial confession before these witnesses in connection with the murder of his father and stated that there was some altercation between his father and himself, his father scolded him that he was not taking the cattle to the field for the purpose of grazing which infuriated him and he picked up a stone and attacked his father, therefore, in view of the evidence of these witnesses the involvement of the accused/appellant in the crime in question is established. 8. Learned counsel for the accused/appellant argued that the prosecution has not been able to establish the fact against the accused	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that the accused attacked Sadhuram with an intention to cause his death. He submitted that even from the prosecution evidence it has come on record that when the accused and the deceased were in their house, the deceased scolded the accused for not taking the cattle to the field for the purpose of grazing, which infuriated him and he picked up a stone and attacked with the same on the head of his father as a result of which the skull bone was fractured and he died in the next morning i.e. 21.10.1998 at about 6 a.m. 9. The argument advanced by learned counsel for the accused/appellant is based on the material available on record and the same is not without merit. The evidence of the prosecution witnesses goes to show that there was some altercation between the father of the accused and the accused. The accused picked up a stone and attacked with it on the head of his father. In view of the above evidence it is established that the case is covered under exception 4 of section 300 of the IPC because the accused assaulted the deceased without any premeditation in a sudden fight in the heat of passion upon a sudden quarrel without taking any undue advantage or acted in a cruel or unusual manner. 10. In the result, we are of the considered opinion that the conviction of the accused under section 302 of the IPC cannot be sustained. Accordingly, the appeal partly succeeds and the conviction of the	

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आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
<i>phon</i>	accused/appellant under section 302 of the IPC is set aside, instead thereof the appellant is convicted under section 304-II of the IPC and sentenced to undergo RI for seven years. From the record it appears that the accused/appellant is in custody since 1998 and thus he has already undergone the sentence imposed upon him. 11. In the aforesaid circumstances, it is directed that the appellant be set at liberty forthwith if not required in any other case. Sd/- L.C.BHADOO Judge	Sd/- Dhirendra Mishra Judge